

less than sixty days in a given calendar year, who has been an employee in an executive level position or a position with a comparable or greater rate of pay, or in a position which involved significant decision making or supervisory responsibility as designated by the Director of Office of Government Ethics under 18 U.S.C. 207(d)(1)(C), shall, within one year after such employment has ceased, knowingly engage in conduct described in the next sentence. The prohibited knowing conduct is that of acting as attorney or agent for, or otherwise representing anyone other than the United States, in any formal or informal appearance before, or with the intent to influence, making any oral or written communication on behalf of anyone other than the United States (1) to the Commission, or any employee thereof, (2) in connection with any rulemaking or any matter enumerated and described in paragraph (a)(2) of this section and (3) which is pending before the Commission or in which it has a direct and substantial interest.

(e) No partner of an employee shall act as agent or attorney for anyone other than the United States before an organization enumerated in paragraph (a)(1) of this section, or any officer or employee thereof, in connection with any matter enumerated and described in paragraph (a)(2) of this section in which such Government employee is participating or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his or her official responsibility.

§ 500.6 Disciplinary proceedings against former employees.

(a) Upon a determination by the Commission's Designated Ethics Officer, after investigation, that there is reasonable cause to believe that a former officer or employee, including a former special Government employee, has violated 18 U.S.C. 207 (a), (b) or (c), the Designated Ethics Officer shall cause a copy of written charges of the violation(s) to be served upon such individual, either personally or by registered mail. The charges shall be ac-

companied by a notice to the former employee to show cause within a specified time of not less than 30 days after receipt of the notice why he or she should not be prohibited from engaging in representational activities in relation to matters pending before the Commission, as authorized by 18 U.S.C. 207(j), or subjected to other appropriate disciplinary action under that statute. The notice to show cause shall include:

(1) A statement of allegations, and their basis, sufficiently detailed to enable the former employee to prepare an adequate defense;

(2) Notification of the right to a hearing; and

(3) An explanation of the method by which a hearing may be requested.

(b) If a former employee who submits an answer to the notice to show cause does not request a hearing or if the Designated Ethics Officer does not receive an answer within five days after the expiration of the time prescribed by the notice, the Designated Ethics Officer shall forward the record, including the report(s) of investigation, to the Chairman. In the case of a failure to answer, such failure shall constitute a waiver of defense.

(c) Upon receipt of a former employee's request for a hearing, the Designated Ethics Officer shall notify him or her of the time and place thereof, giving due regard both to such person's need for an adequate period to prepare a suitable defense and an expeditious resolution of allegations that may be damaging to his or her reputation.

(d) The presiding officer at the hearing and any related proceedings shall be a Federal administrative law judge or other Federal official with comparable duties. The presiding officer shall insure that the former employee has, among others, the rights:

(1) To self-representation or representation by counsel;

(2) To introduce and examine witnesses and submit physical evidence;

(3) To confront and cross-examine adverse witnesses;

(4) To present oral argument; and

(5) To a transcript or recording of the proceedings, upon request.

(e) The Designated Ethics Officer shall designate one or more officers or employees of the Commission to

present the evidence against the former employee and perform other functions incident to the proceedings.

(f) A decision adverse to the former employee must be sustained by substantial evidence that he or she violated 18 U.S.C. 207 (a), (b) or (c).

(g) The presiding officer shall issue an initial decision based exclusively on the transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, and shall set forth in the decision findings and conclusions, supported by reasons, on the material issues of fact and law presented on the record.

(h) Within 30 days after issuance of the initial decision, either party may appeal to the Chairman, who in that event shall issue the final decision based on the record of the proceedings or those portions thereof cited by the parties to limit the issues. If the final decision modifies or reverses the initial decision, the Chairman shall specify the findings of fact and conclusions of law that vary from those of the presiding officer.

(i) If a former employee fails to appeal from an adverse initial decision within the prescribed period of time, the presiding officer shall forward the record of the proceedings to the Chairman.

(j) In case of a former employee who filed an answer to the notice to show cause but did not request a hearing, the Chairman shall make the final decision on the record submitted by the Designated Ethics Officer pursuant to subsection (b) of this section.

(k) The Chairman, in a case where:

(1) The defense has been waived;

(2) The former employee has failed to appeal from an adverse initial decision; or

(3) The Chairman has issued a final decision that the former employee violated 18 U.S.C. 207 (a), (b) or (c) may issue an order:

(i) Prohibiting the former employee from making on behalf of any person or party (other than the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, the Commission on a pending matter of business for a period not to exceed five years, or

(ii) Prescribing other appropriate disciplinary action.

PART 501—SUBPOENAS, DEPOSITIONS, AND OATHS

Sec.

501.1 Extent of authority.

501.2 Subpoenas.

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501.7 Time.

AUTHORITY: Sec. 2, Pub. L. 80-896, 62 Stat. 1240, as amended (50 U.S.C. App. 2001); sec. 3, Pub. L. 81-455, 64 Stat. 12, as amended (22 U.S.C. 1622).

SOURCE: 52 FR 17559, May 11, 1987, unless otherwise noted.

§ 501.1 Extent of authority.

(a) *Subpoenas, oaths and affirmations.* The Commission or any member thereof may issue subpoenas, administer oaths and affirmations, take affidavits, conduct investigations and examine witnesses in connection with any hearing, examination, or investigation within its jurisdiction.

(b) *Certification.* The Commission or any member thereof may, for the purpose of any such hearing, examination, or investigation, certify the correctness of any papers, documents, and other matters pertaining to the administration of any laws relating to the functions of the Commission.

§ 501.2 Subpoenas.

(a) *Issuance.* A member of the Commission or a designated employee may, on such member or employee's own volition of upon written application by any party and upon a showing of general relevance and reasonable scope of the evidence sought, issue subpoenas requiring persons to appear and testify or to appear and produce documents. Applications for issuance of subpoenas duces tecum shall specify the books, records, correspondence, or other documents sought. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(b) *Deposit for costs.* The Commission or designated employee, before issuing